



**MINUTES OF THE CITY COUNCIL
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, November 18, 2003, 8:00 p.m.**

MEETING

The Meeting of the City Council was called to order by Mayor Cooper at 8:00 p.m., followed by the Pledge of Allegiance led by Council Member Hilson.

ROLL CALL

Present: COUNCIL MEMBERS Jimenez, Hilson, Rodriquez, Ward, Dowling, Henson

MAYOR Cooper

Absent: None

PUBLIC COMMENTS

Barbara Swarr commented on a map she reviewed that stated no permits are permitted in particular areas. She felt that this was another way of manipulating homeowners and asked the Council have empathy.

Christopher Brunner submitted a card and gave his time to his wife.

Lisa Brunner commented on low voter turnout at the recent school board election in relation to home ownership and Section 8 housing. She asked that the City encourage home ownership and preserve our existing neighborhoods.

Jeanne Goecker announced the 16th Annual Christmas Fundraiser that will be held on Dec. 6th at 24982 Second Street and Entertainment Books to benefit the Animal Shelter.

Jason Moreno commented on fire department personnel.

PRESENTATION – Business Recognition Award

The City of Hayward presented the November 2003 Business Recognition Award to Toyota Material Handling of Northern California (TMH). TMH is primarily a distributor for Toyota forklifts but is also a supplier of other material handling equipment. TMH has four locations with its headquarters at 31010 San Antonio Street in Hayward and three branches in Sacramento, Salinas and Fresno. TMH has 188 employees, with 70 working at the Hayward headquarters. Every year Toyota Industrial Equipment bestows a President's Award on only fifteen out of 100 Toyota industrial dealers nationwide. The Toyota dealer must excel in every aspect of customer service and support to receive this award. TMH has received the President's Award every year since Mr. Andres purchased the company. TMH is among the top 5 dealers in the country. Their sales have grown from \$18 Million in 1997 to \$50 Million in 2003. TMH has worked with Police and Public Works Departments to find solutions to

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public safety problems on Hayward Streets. In addition, TMH received Recycling and Waste Reduction Awards in 2002 and 2003. Mr. Rich Andres, President of Toyota Material Handling, accepted the award and thanked Council for this honor.

CONSENT

Council Member Henson asked for clarification on whether he could vote on the minutes as he was absent from the meeting. City Attorney O'Toole affirmed that he could take action.

1. Approval of Minutes of the City Council Meeting of October 28, 2003

It was moved by Council Member Henson, seconded by Council Member Ward, and unanimously carried, to approve the minutes of the City Council Meeting of October 28, 2003.

2. Utility Service Agreement 03-03, PL-2003-0550 - Hayward Area Recreation District (Applicant/Owner) - Authorize the City Manager to Execute Utility Service Agreement for Water Service for Property Located at 25847 Five Canyons Parkway

Staff report submitted by Development Review Services Engineer Gaber, dated October 28, 2003, was filed.

It was moved by Council Member Henson, seconded by Council Member Ward, and unanimously carried, to adopt the following:

Resolution 03-145, "Resolution Authorizing the City Manager to Apply to LAFCO for Approval of Utility Service Agreement (USA 03-03) to Provide Water Service the for the Park Located in Five Canyons Parkway and Further Authorizing the City Manager to Execute Such Agreements for Water Service"

3. Hesperian Booster Pump Station Project: Authorization for Increase in Additional Professional Services, Approval of Plans and Specifications and Call for Bids

Staff report submitted by Deputy Director of Public Works Ameri, dated October 28, 2003, was filed.

It was moved by Council Member Henson, seconded by Council Member Ward, and unanimously carried, to adopt the following:

Resolution 03-146, "Resolution Approving Plans and Specifications for the Hesperian Booster Pump Station Project, Project Nos. 7144, 7091 and 6944, and Call for Bids and Further Authorizing an Increase in Additional Professional Services Agreement with Carollo Engineers"

4. Authorization for the City Manager to Execute an Agreement for Professional Services with Retail Real Estate Group to Market Vacant Property at the Hayward Executive Airport



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Staff report submitted by Airport Manager Shiner, dated October 28, 2003, was filed.

It was moved by Council Member Henson, seconded by Council Member Ward, and unanimously carried, to adopt the following:

Resolution 03-146, "Resolution Authorizing the City Manager to Execute a Professional Services Agreement with Retail Real Estate Group to Market Vacant City Property at the Hayward Executive Airport"

HEARINGS

5. Zone Change No. PL-2002-0722 and Vesting Tentative Tract Map 7435/PL-2002-0726 - Paul Martin for Hayward Commons, LLC (Applicant)/Evelyn Lutes (Owner) - Request to Change the Zoning from a Single-Family Residential (RSB6) District to a Planned Development (PD) District and Subdivide 1.1 Acres to Build 15 Homes - The Project Location is 26965 Hayward Boulevard (*continued from 10/28/03*)

Staff report submitted by Associate Planner Pearson, dated October 28, 2003, was filed.

Planning Manager Anderly made the presentation, noting that the development has been reduced to fourteen dwelling units with an additional two parking spaces to bring the number up to eight guest spaces.

Council Member Henson asked whether the applicant had exceeded the parking and group open space.

Staff affirmed that the applicant had reduced the number of units, thus resulting in additional guest parking and group open space.

Council Member Hilson compared the staff's recommendation with the applicant's proposal and felt that the private open space for the units had been reduced. He commented on the required standard single-family parking requirement of five spaces as compared to this townhouse development where the requirement is nearly half.

Staff reported that the private open space remains the same. In regards to parking, it was noted that there might be a traffic engineering trip generation study to be used as a model.

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Council Member Ward asked about the map and green space. He also asked about trees, suggesting that the tree height be limited. He commended staff and the applicant for a reasonable compromise on the outstanding issues.

Mayor Cooper opened the public hearing at 8:41 p.m.

Paula Navarro expressed her frustrations and commented on issues related to the information sent to neighbors. She addressed her concerns regarding previous comments made by each Council member. She felt that this was a major concern for the neighbors on Spencer Lane. The project is too dense for the lot. She stated that a compromise would be 10 homes.

Stephen Kanzee, Secretary/Treasurer of the Gardenwood Terrace Homeowner's Association, noted that at a recent Board of Directors meeting requested that no large trees be on the west side of this project, which might shade their building. He mentioned that Gardenwood Terrace has 18 visitor parking spaces for 76 units. The problem is not visitors but residents using the extra parking.

Jeff Blum suggested the housing project be reduced to four houses since that would fit into the Neighborhood Plan.

Evermont King spoke in favor of the project. He said parking would be an on-going problem as long as people continue to buy and move into the City.

Jim Sommer who lives on Hemingway Court said the Court would be facing this project from his back yard and spoke against the project. This project will impact all of them in the neighborhood. He suggested reducing the density on this project including additional parking on the site. He asked about the boundary trees at his back and requested maintaining the existing trees.

Paul Martin, the developer, emphasized the changes to the project because of issues that were discussed at the previous meeting and meetings with the neighborhood residents. He noted the reduced units and the additional parking area. He would like to keep the units offset, which will minimize grading on the site. He said he is willing to work with staff on fronting the units toward Hayward Boulevard. He asked that the Condition of Approval "L" be revised to exclude the parallel side property line. He responded to Council questions regarding density, the staggering of units to increase group open space, and issues related to trees.

In regards to Council Member Hilson's comments regarding the grading, he agreed to stagger or realign the units to minimize grading in the development of the back units.

Council Member Henson commented on the amount of correspondence that he received and asked Mr. Martin if he met with the neighbors.

Mr. Martin stated that he tried to address what was brought up at the neighborhood meeting. At that point the parking issue arose. He also worked with staff after the Planning Commission recommendation.



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Mayor Cooper closed the public hearing at 9:07 p.m.

Council Member Jimenez moved the staff recommendation, seconded by Council Member Dowling.

Council Member Hilson clarified that this would be a hybrid between the two groups of units.

Council Member Dowling emphasized that Mrs. Lutz has a right to some return of her property. This should be a good transition project for the neighborhood.

Council Member Henson stated that he is in support of the project and heard from both sides of the issue. He approved of the transition type of housing as available for Cal State staff. He commended the developer for working with staff and acceding to changes. He commented on the condition of approval related to storm drainage with the use of interlocking pavers in the driveways and entryways and it will address the drainage use in that project.

Council Member Rodriquez commented that the area is already heavily congested, and all along Carlos Bee there is very intense housing. In her experience, Spencer is heavily traveled. Intense housing is important to this area. She thanked the developer for his efforts into trying to evolve the project into something everyone could live with and like.

Mayor Cooper stated that she would be supporting the motion since there is not much land left in Hayward. She commented on the "Not in My Backyard" reaction to the project. She noted that the City of Hayward is an urban area. This is an infill project that will increase vehicle use in this urban community.

Council Member Hilson said he would have been happier if this project were ten units rather than the fourteen requested. He said he would reluctantly support the project, as the developer was willing to revise many of his proposals.

It was moved by Council Member Jimenez, seconded by Council Member Dowling, and carried by the following roll call vote to adopt the resolution and introduce the ordinance as follows:

Resolution 03-148, "Resolution Adopting Mitigated Negative Declaration and Mitigation Monitoring Plan and Approving Tentative Tract Map No. 7435, Zone Change Application No. PL-2002-0722, and the Preliminary Development Plan"

Introduce Ordinance No. 03-____, "An Ordinance Amending the Zoning District Map of Chapter 10, Article 1 of the Hayward

Municipal Code by Changing the Zoning from Single-Family Residential (RSB6) to Planned Development (PD) Pursuant to Zone Change Application No. PL-2002-0722”

AYES: Council Members Jimenez, Hilson, Ward,
Dowling, Henson
MAYOR Cooper
NOES: Council Member Rodriguez
ABSENT: None
ABSTAIN: None

LEGISLATIVE BUSINESS

6. Consideration of Medical Marijuana Ordinance

Staff report submitted by City Manager Armas, dated October 28, 2003, was filed.

City Manager Armas reiterated the chronological steps that were involved. The City of Hayward has learned that a number of cities and counties have created guidelines for the identification of patients, very few have provided for facilities for the medical sale of marijuana. At present in Hayward there is legally no structure for the presence of the facilities, but many municipalities have created a system for them to be informally sanctioned. Here in Hayward, a Task Force was established and recommendations were made for consideration of this Ordinance. Since that time, a third facility has opened. The Task Force recommendation was to provide for essential identification and grandfather the two current facilities on Foothill Boulevard for three years or until the Federal Government takes further action on the issue. A third facility has opened. Staff asked for an ordinance adopting the recognition of patient identity cards and recognizing the two facilities on Foothill Boulevard, The Patient's Cooperative and Hempery.

Council Member Hilson asked how do we know the customers are under a doctor's care and what is the limitation on quantities dispensed to an individual.

City Manager Armas said we would not, but the ordinances that we have seen have a prerequisite that the identification card be issued only if the individual meets certain criteria, one of which is a recommendation from a medical doctor. The proposed ordinance would limit the amount to that which would be allowed on the premises.

Council Member Henson noted that this does not address the actual use on the premises.

City Manager Armas responded that the ground rules are that smoking to be prohibited on the premises except for extraordinary circumstances.



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Council Member Henson then asked about going with the compromise of the task force for two dispensaries. He asked whether this was in reference to a corridor or the actual number of facilities.

City Manager Armas explained that there was one facility on the second floor of a building on B Street. However, the consensus was to not allow such businesses on "B" Street. However, during the process, the B Street facility stated that they would be moving to the county, which actually made the point moot. That enabled the compromise to be brought forward. Apparently the individual did not move and requested consideration of his store to be sanctioned as well.

Council Member Ward asked whether there were any other facilities in surrounding jurisdictions. He then discussed the possibility of a facility at A and Main Streets and asked how the City of Hayward would enforce this if such exists at that location.

City Manager Armas explained that enforcement would proceed with zoning regulations.

Council Member Ward said this establishment is calling itself a coffee shop. The presumption is that anything else that occurs would be a secondary use. He then asked about the identification card and whether there would be any requirement for the business owner.

City Manager Armas said it is a voluntary program. The two facilities would be expected to adhere to the ground rules addressed in the staff report.

Council Member Ward suggested that there might be categories of a variety of potency. How would the City of Hayward be able to determine the potency? He asked whether the City could require the establishments to obtain a business license under the category of pharmaceuticals.

City Manager Armas said that none of the regulations deal with this issue. He commented that a business license was applied for by one of the businesses. However, the full nature of the business was not disclosed. He then suggested that the two businesses, which would be grandfathered might be willing to cooperate.

Mayor Cooper opened the public hearing at 9:49 p.m.

Dr. Mike Alcalay said he thought that there were three dispensaries, not two, to be eligible for a total of three years. He cited the recent legislation that legalizes medicinal marijuana. He recommended three dispensaries be approved.

Steph Sherer noted that she is with Americans For Safe Sales that represents 7000 patients. She also spoke on allowing the third club dispensary, which is experienced in this effort.

Elizabeth Veloza also spoke in support of allowing three dispensaries.

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Stacy Fernandez submitted a speaker card, but did not speak.

Curtis Hepner discussed the need for alternatives to pain medication. He asked that Council delay their action until further review.

Paul Baerwald said he was an employee of the dispensary on A Street. Many of the patients would not be comfortable going to another shop. He urged that the vote be delayed until a review of all the establishments is made.

Council Member Dowling asked him how long has he worked in this dispensary.

Mr. Baerwald said since 1995 and he has been a lifelong resident of Hayward and recently moved to Castro Valley.

Jane Weirick explained her confusion since the Helping Hands thought the issue had been settled that they would be allowed to operate. She pleaded for support from Council Members and asked that they not deprive their patients of their caregivers. She submitted letters of support from patients and businesses.

Council Member Rodriguez asked Ms. Weirick how many patients they have.

She said they have about 300 patients, which is normal for a cooperative their size. She also explained that the committee presented their recommendation to the Council.

Council Member Ward asked Ms. Werick further questions.

She explained that the recommendation for two dispensaries was predicated with the move of the third out of the County. She noted that their support for only two was based on the third moving out of the area.

Council Member Jimenez asked about the mile separation from a school facility. He noted that the two Foothill businesses are within one mile of the Bret Harte School.

City Manager Armas commented that the committee recommendation centered on the establishments in Hayward and did not need to address that issue.

Council Member Henson asked Ms. Weirick about the 300 patients that would be displaced due to her closure.

Ms. Weirick explained that the patients would not be happy with a change in dispensary. She reported that she owns the name Hayward Hempery. When the original business was sold, the new owner was required to change the name to the Hayward Patients Group. She commented that her first priority was to move the dispensary out of the Redevelopment Area.

Council Member Ward asked her about the training and the knowledge of those dispensing.



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Ms. Weirick responded that she is a court-qualified expert because of her years of experience in the industry. As President of the Medical Cannabis Association, she said she would continue to work to provide the best operation.

William Panzer an attorney and co-author of Prop 215, He said the nearest dispensary to Hayward is in Oakland. He spoke on behalf of Jane Weirick. He referenced the City of Fairfax, which required 86 regulations. She was brought in to bring the dispensary into compliance. She has invested in a new technology. She cares about patients.

Janeen Dunbar, a former Helping Hands employee, said they worked without pay for over a month but would not abandon their patients.

Ryan Landers stated that he worked to develop SB 420. He stated that patients need choices and patients cannot be shifted from one dispensary to another.

Melody Gannon gave her time to Ed Rosenthal who noted that it is unconstitutional according to state law to limit the number of dispensaries. He said he felt that this is an ACLU issue. He noted that no one is talking about the potency or the weight of the product so there is no consumer protection in the Ordinance. He commented that this is basically an herb shop.

Victor Buxbaum said he was the massage therapist and yoga teacher at Jane's dispensary. He then asked that this ordinance be held. The Clubs are performing a service to the community.

Council Member Henson asked for his reasons for a reconsideration of the ordinance.

Mr. Buxbaum said only that the number of clubs allowed to operate should include this club.

Tom Lemos, manager of the Hayward Patients Resource Center, said taking the old Helping Hands worked with Jane Weirick at the previous dispensary. He suggested the members go back and reconsider adding the third.

Ray Carlson emphatically spoke on behalf of accepting the third dispensary.

City Manager Armas clarified that the ordinance does not address the number of dispensaries. A second issue is the quantity of dispensaries.

Dustin Costa spoke about his concern with potency, strength and dosage. He said the City should be working on guidelines for compassionate caregivers, rather than ruling them out.

Alberto Lens said he was a survivor of cancer and lost more than forty pounds. He said nothing could stay in his stomach. He then smoked marijuana and was able to eat. He no longer uses it.

He urged the three dispensaries remain.

Don Duncan, operator of a Berkeley dispensary, said he left the previous Council work session with the impression that no one called to close a dispensary. He reminded the Council that there was no discussion related to a two-dispensary limit. He said medical dispensaries could be operated in a safe, orderly and legal manner.

Council Member Ward said he visited two of the facilities.

Robin Few asked for reconsideration to have three clubs in the community.

Joshua John said he was disappointed that he had to return once again. He commended the Council for the identification cards. He commented on the strains that he needs and uses. He felt that one club was too dark and one club has stairs. Currently, he only frequents the club that is to be closed.

Ron Deziel said he expected to hear the ordinance regarding the identification cards under consideration to be discussed.

City Attorney O'Toole said both issues would be considered this evening by motion to grandfather two or three clubs on a three-year trial basis, as well as the introduction of the ordinance.

Mr. Deziel said this is about the Helping Hands dispensary. He noted that they were not dealing with nuisance operations, but service providers of medicine.

Robert Raich said three dispensaries are better than two and promote a greater choice. Having fewer dispensaries will increase back alley sales. He enumerated various scenarios.

Armando Soto, a cancer survivor, said he uses Berkeley cannabis clubs. He asked the Council not to view these clubs as nuisances. More clubs will help with the revitalization of the downtown.

Mayor Cooper closed the public hearing at 10:50 p.m.

Mayor Cooper commented that Hayward is a compassionate City. She suggested that other cities might be asked to do the same. The concern is that the City authorities do not want the DEA swooping down on the businesses in Hayward. Oakland is having a problem. She noted that her colleagues on the Council do care and have worked on this issue. Ms. Weirick was a party to the agreement of the Task Force for only two clubs in the City of Hayward.

Council Member Dowling thanked the Mayor for all of those who were on the Task Force. Hayward in general is compassionate. He said he thought he could make a proposal that would



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satisfy the Chamber of Commerce and others as well. He recommended changing the Clubs to include the Local Patients Cooperative and the Hayward Patients Resource Center. Both these clubs are run by experienced responsible individuals. Neither is in the downtown core nor on B Street. Then both centers can understand the cities concern. Hayward is picking up the slack for other cities. He proposed this as a motion. It was seconded by Council Members Henson and Rodriquez.

Council Member Ward offered a motion, which would support the staff recommendation as submitted by the Task Force. He noted that three is better than two and two is better than one, in terms of the Clubs. Council Member Ward then agreed to remove the dispensary part of his motion and consider only the Ordinance. This was seconded by Council Member Hilson.

Council Member Hilson stated that this Council was under no legal obligation to pass this ordinance and has been involved with a myriad of efforts towards helping those in need and being compassionate. This Council understands pain. It will be based on the spirit, and two dispensaries are what is the best thing for the City of Hayward. His constituents are overwhelmingly against this.

It was moved by Council Member Ward, seconded by Council Member Hilson, and unanimously carried to introduce the following:

Introduce Ordinance No. 03-___, "An Ordinance Adding Article 15 to Chapter 2 of the Hayward Municipal Code Relating to Control of Medical Marijuana"

Council Member Rodriquez said she understands people in pain. She said she supported Council Member Dowling's motion. Her advice was to resolve the issue of legalization. There would not be all the strong feelings in the discussions. She suggested the attorneys address these problems.

City Manager Armas clarified the two facilities being grand fathered: the Local Patients Cooperative and the Hayward Patients Resource Center.

It was moved by Council Member Dowling, seconded by Council Member Henson, and unanimously carried to approve grandfathering two facilities, the Local Patients Cooperative and the Hayward Patients Resource Center.

COUNCIL REPORTS

Council Member Hilson reported on the Conditions of Children Committee meeting he attended with the California First Five Coalition, as well as a recent League of California Cities board meeting and various actions they will be proposing to the Legislature and Governor with regard

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to funding for local municipalities.



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ADJOURNMENT

Mayor Cooper adjourned the meeting at 11:20 p.m.

APPROVED:

Roberta Cooper, Mayor, City of Hayward

ATTEST:

Angelina Reyes, City Clerk, City of Hayward

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